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BEFORE THE FEDERAL ELECTION COMMISSION RECEIVED
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COMMISSION
SECRETARIAT

In the Matter of)
)
)
MarkVision Computers, Inc.)
MarkVision Holdings, Inc.)
Howard Glicker)
Greenberg, Traurig, Hoffman, Lipoff,)
Rosen & Quentel, P.A.)
Marvin Rosen)
High, Stack, Lazenby, Pallahach,)
Goldsmith & Del Amo)
Charles "Bud" Stack)

MUR 4884

1999 DEC -1 P 4 15

SENSITIVE

GENERAL COUNSEL'S REPORT

I. ACTIONS RECOMMENDED

Take no further action and close the file with regard to all respondents

II. BACKGROUND

This matter concerns violations of 2 U.S.C. §§ 441a, 441b, 441e and 441f arising from Future Tech International, Inc.'s ("Future Tech") combined \$110,000 in non-federal contributions to the Democratic National Committee ("DNC") and \$39,500 in conduit contributions made to various candidate committees. See First General Counsel's Report dated February 12, 1999. The DNC contributions were made from corporate accounts at the direction of Future Tech's then-CEO Mark Jimenez at a time when he was a foreign national. The conduit contributions were similarly made at Mr. Jimenez's direction, although subsequent to his becoming a resident alien, and also involved four corporate officers. The funds for these conduit contributions appear to have originated from corporate accounts and from Mr. Jimenez's personal account.

On May 19, 1999, the Commission voted to accept a conciliation agreement signed by the four Future Tech officers and to close the file with regard to Future Tech and the officer respondents.¹ *See* General Counsel's Report dated May 13, 1999. Pursuant to the conciliation agreement and requests by this Office for all additional information in Future Tech's possession relating to the unlawful contributions, counsel for the Future Tech respondents produced over 600 pages of documents between June and September 1999.² This Report discusses this new information along with responses received from the remaining respondents, and makes appropriate recommendations.

III. DISCUSSION

A. Howard Glicken

The Commission found reason to believe that Howard Glicken violated 2 U.S.C. §§ 441b and 441f in connection with his possible acceptance and receipt, on behalf of the Clinton/Gore '96 Primary Committee ("Clinton/Gore"), of 23 individual \$1,000 contributions that were reimbursed with corporate funds via company bonuses from Future Tech or its related corporation MarkVision Computers, Inc.³ As noted in the First General Counsel's Report,

¹ The four Future Tech officers are (1) Juan M. Ortiz, Chief Financial Officer, (2) Louis Leonardo, President, (3) Leonard Keller, Secretary and Director, and (4) Gregorio P. Narvasa, Treasurer. Future Tech and the four officers each admitted to violating 2 U.S.C. §§ 441b(a) and 441f, and Future Tech additionally admitted to violating 2 U.S.C. § 441e. Respondents paid a combined civil penalty of \$209,000. In the related criminal matter, Future Tech entered into a plea agreement through the Department of Justice that included paying a \$1,000,200 fine (Future Tech also pled guilty to tax evasion charges associated with the illegal contributions). *See* First General Counsel's Report, Attachment 1. According to a DNC letter to Future Tech dated July 19, 1999, which was faxed to this Office by the DNC's general counsel, the DNC has refunded \$110,000 from its non-federal account to Future Tech based on the May 19, 1999 conciliation agreement with Future Tech.

² These documents are available for review in the General Counsel's Office.

³ On July 15, 1999, the Commission voted to order Clinton/Gore to pay the federal treasury approximately \$6,000 in federal matching funds that it received based on these illegally reimbursed contributions. *See* FEC Agenda Document No. 99-77 (July 8, 1999, considered on July 15, 1999).

documents obtained

identified Mr. Glicken as the solicitor

of a \$1,000 contribution by Mark Jimenez to the DNC. All but one of the 23 reimbursed contributions were received by Clinton/Gore on the same day

which suggested that Mr. Glicken may have been involved in soliciting, and subsequently unlawfully accepting, these conduit contributions.⁵

In his response to the reason to believe findings, counsel for Mr. Glicken claims that, although Mr. Glicken "was one of several people" who solicited contributions from Mr. Jimenez to Clinton/Gore, he did not solicit, accept or receive any contributions from Future Tech, MarkVision Computers, Inc., "or from any of the employees of those corporations." Attachment 1, p. 1. Attached to the response is a sworn affidavit from Mr. Glicken stating the same. The affidavit explains that, during a fundraising dinner held in the Miami area in September 1995, Mr. Jimenez handed an envelope to [Florida] Lt. Gov. Buddy McKay, noting that it contained \$25,000 in contributions he had raised on behalf of Clinton/Gore. The affidavit states that, although Mr. Glicken was present when Mr. Jimenez handed the envelope to

⁵ The solicitation of the contributions would have occurred after Mr. Jimenez had obtained resident alien status, and thus would not have violated the Act. Unlike 2 U.S.C. § 441e, which explicitly prohibits the solicitation of a foreign national, 2 U.S.C. §§ 441b and 441f do not contain similar solicitation prohibitions.

Mr. McKay, he "did not see what was in the envelope . . . and only later was advised with respect to the contents of the envelope." *Id.* at p. 3. Mr. Glicken's affidavit concludes that he "did not solicit employee contributions from Mark Jimenez and did not accept any employee contributions from Mark Jimenez with knowledge that these contributions were to be reimbursed either with corporate funds or by Mr. Jimenez." *Id.* at 4.

The documents produced by Future Tech do not shed any further light on the fundraising activities of Mr. Glicken as they relate to this matter. Although certain documents reference Mr. Glicken's involvement in arranging Mr. Jimenez's attendance at a "White House Majority Trustee Dinner" in February of 1995, there is no evidence that might connect Mr. Glicken to the reimbursed contributions made later that year. In view of Mr. Glicken's sworn statement denying any involvement in the solicitation, acceptance or receipt of the contributions at issue, as well as the lack of additional evidence implicating him in this matter, this Office recommends that the Commission take no further action against Howard Glicken and close the file as to him.

B. The Lawyer and Law Firm Respondents

The Commission found reason to believe that Marvin Rosen and his law firm, Greenberg, Traurig, Hoffman, Lipoff, Rosen & Quentel, P.A. ("Greenberg & Traurig"), and Charles "Bud" Stack and his law firm, High, Stack, Lazenby, Pallahach, Goldsmith & Del Amo ("High & Stack") violated 2 U.S.C. § 441e by soliciting contributions from Future Tech when Mr. Jimenez was still a foreign national. In a supplement to its *sua sponte* submission, Future Tech had identified Greenberg & Traurig as a possible solicitor of contributions at political events in 1994,

and internal DNC contribution documents obtained

identified Mr. Rosen as the possible solicitor of Future Tech's two \$50,000 contributions to the DNC in 1994.⁷ See First General Counsel's Report at 16-18. Internal DNC documents cited Mr. Stack as the solicitor of a \$5,000 contribution on May 10, 1993 from Future Tech to the DNC's non-federal account.

In a response submitted on behalf of Mr. Rosen and Greenberg & Traurig, counsel argues that: (1) the Commission "is time-barred from pursuing this matter"; (2) soft money donations from a U.S. corporation that were directed by a foreign national do not violate 2 U.S.C. § 441e;⁸ (3) Mr. Rosen assumed that Mr. Jimenez was "legally situated to participate in U.S. politics," as Mr. Jimenez's citizenship status was unknown to Mr. Rosen when they first met "in late 1993 or early 1994," and he "did not learn until several years after Mr. Jimenez obtained resident alien status" that he was not a U.S. citizen; and (4) Mr. Rosen's "contact with Mr. Jimenez [at the dinner event held just prior to the making of Mr. Jimenez's March 1994 contributions] did not constitute a 'solicitation' of Mr. Jimenez's attendance at the event or Future Tech's decision to contribute, within the meaning of the federal election laws." Attachment 2, p. 2-7.

⁷ In MUR 4638, the Commission found reason to believe that Greenberg & Traurig violated 2 U.S.C. § 441e by soliciting contributions from foreign national Thomas Kramer to local and state candidates in Florida during the 1993-94 election cycle. On December 31, 1997, the Commission accepted a conciliation agreement signed by Greenberg & Traurig with an admission that it solicited approximately \$91,000 in contributions from a foreign national, and containing a civil penalty of \$77,000. The conciliation agreement did not identify which individuals at the law firm were involved in the solicitations. See MUR 4638, General Counsel's Report dated December 19, 1997.

⁸ Counsel's argument that the nationality status of Mr. Jimenez would not have made Future Tech's soft money donations illegal, is based primarily on the district court's decision in *United States v. Trie*, 23 F. Supp. 2d. 55, 59-61 (D.D.C. Oct. 9, 1998) that the section 441e solicitation prohibition is only applicable to "contributions" for federal elections. Subsequent to the receipt of counsel's response, the U.S. Court of Appeals for the D.C. Circuit recently ruled that section 441(e) prohibits soft money donations. *United States v. Kanchanalak*, 1999 WL 798065 (D.C. Cir. Oct. 8, 1999).

Charles "Bud" Stack, in an affidavit attached to a response submitted on behalf of him and High & Stack, denies soliciting the May 10, 1993 contribution of \$5,000 from Mark Jimenez or Future Tech, adding that he has "never met with or spoken to Mr. Mark Jimenez," and has "no recollection of anyone named Mark Jimenez or of his citizenship status." Attachment 3, p. 6.

Counsel asserts in the response that the DNC document referenced by the Commission "incorrectly states that 'Bud Stack' was the solicitor" of the \$5,000 non-federal contribution.⁹ *Id.* at 2. Post-conciliation documents produced by Future Tech included an invitation letter to a Florida fundraiser from Mr. Stack to Mr. Jimenez; however, the fundraiser occurred after Mr. Jimenez had achieved residency status in the United States.

As noted in the First General Counsel's Report, the statutes of limitations for seeking civil penalties against the lawyer and law firm respondents had already expired, or were about to expire, but reason to believe recommendations were nevertheless made to allow these respondents an opportunity to respond and clarify the record. The recent submissions by them do not shed any new light on their involvement. Given the age of the activity and the lack of additional evidence linking these respondents to the solicitations at issue, this Office believes that no further resources should be invested in pursuing them. Accordingly, this Office recommends that the Commission take no further action against Marvin Rosen; Greenberg, Traurig, Hoffman, Lipoff, Rosen & Quentel, P.A.; Charles "Bud" Stack and High, Stack, Lazenby, Pallahach, Goldsmith & Del Amo; and that it close the file as to each of them.

⁹ Counsel also argues that the statute of limitations on any alleged violations has passed, and that the Act does not prohibit soft money donations by foreign nationals, relying on *U.S. v. Trie*. See footnote 8.

C. MarkVision Computers, Inc. and MarkVision Holdings, Inc.

As described in the First General Counsel's Report, Mr. Jimenez appears to have used certain employees of two related entities, MarkVision Holdings, Inc. and MarkVision Computers, Inc., as contribution conduits and to have reimbursed a portion of the employee contributions with corporate funds from MarkVision Computers, Inc. The Commission found reason to believe that these two entities knowingly and willfully violated 2 U.S.C. § 441f, and that, in addition, MarkVision Computers, Inc. knowingly and willfully violated 2 U.S.C. § 441b(a). The conduit reimbursement scheme involving these entities was primarily orchestrated by Mr. Jimenez and Future Tech, as described in detail in the conciliation agreement approved by the Commission on May 19, 1999. Given that Future Tech has assumed full responsibility for the violations arising from the employee conduit contributions, as well as the lack of additional evidence relating to the two entities' involvement (*see* General Counsel's Report dated May 13, 1999, at 3), this Office recommends that the Commission take no further action against MarkVision Holdings, Inc. and MarkVision Computers, Inc. and close the file as to each of them.

Accordingly, given the
recommendations in this Report to take no further action against all respondents, this
Office recommends that the Commission

close

MUR 4884.


IV. RECOMMENDATIONS

1. Take no further action against Howard Glicker.
2. Take no further action against Marvin Rosen and Greenberg, Traurig, Hoffman, Lipoff, Rosen & Quentel, P.A.
3. Take no further action against Charles "Bud" Stack and High, Stack, Lazenby, Pallahach, Goldsmith & Del Amo.
4. Take no further action against MarkVision Holdings, Inc. and MarkVision Computers, Inc.
- 5.
6. Close the file in MUR 4884.

7. Approve the appropriate letters.

Lawrence M. Noble
General Counsel

11-30-99
Date


BY: Lois G. Lerner
Associate General Counsel

Attachments

1. Response of Howard Glicken
2. Response of Marvin Rosen and Greenberg & Traurig
3. Response of Charles "Bud" Stack and High & Stack

Staff Assigned: Thomas J. Andersen